Board of Inquiry Decision under the Ontario *Human Rights Code*

Between:

CHIPPHENG HOM

-and-

ONTARIO HUMAN RIGHTS COMMISSION

Applicants

-and-

ELIJAH ELIEFF

-and-

ELIEFF INVESTMENTS LTD.

Respondents

Before: Ajit John, Chair

Appearances: Geri Sanson and Kim Inksater for the Ontario Human Rights Commisssion
Robert Metz for Elijah Elieff and Elieff Investments Ltd.

Statutes Considered: Human Rights Code R. S. O.1990, c. H.19

Cases Considered *Ahluwalia v. Metropolitan Toronto Board of Commissioners of Police* (1983), 4 C.H.R.R. D/1757 (Ont. Bd. of Inq.)

Dhillon v. F.W. Woolworth C. Ltd. (1982), 3 C.H.R.R. D/743 (Ont. Bd. Inq.)

Jeffers v. Greenbrook Manor Ltd. and Kostiauk (1981), 3 C.H.R.R. D/1038 (Ont. Bd. of Inq.)

Kennedy v. Mohawk College (Ont. Bd. of Inq.),1973 unreported

DECISION OF THE TRIBUNAL,

Introduction

The Complainant, Chippeng Hom, is a woman of Cambodian ancestry. In May 1989, along with her two daughters, she moved into an apartment building at 105 Cheyenne Avenue in the City of London. The Respondent, Elijah Elieff, is of Macedonian ancestry. The Respondent, Elieff Investments Ltd, was the owner at all material times of two buildings at 105 and 95 Cheyenne Ave. . Mr. Elieff provides the connection to the corporate Respondent in so far as he acted both as landlord and as part time superintendant till 1993. The majority of tenants in both the buildings were of Cambodian and Vietnamese origin at the time of the complaint in December, 1989.

The physical conditions in the building and the apartment, coupled with a comment made by Mr. Elieff and reported in the *London Free Press*, led Ms. Hom to conclude that her rights to equal treatment in accommodation, pursuant to sections 2(1) and 2(2) of the Human Rights Code had been infringed due to her race, ancestry, place of origin, and ethnic origin.

Ms. Hom states that the discrimination she experienced after moving into the Cheyenne apartments in May 1989, was linked with, or aggravated by, the landlord's racially-motivated comments in November 1989. The November date is important because Ms. Hom filed her Complaint with the Commission shortly thereafter in December, 1989.

Ms. Hom also alleges that after her Complaint was filed , Mr.Elieff threatened and harassed her, and that this constituted reprisal contrary to section 8 of the Code.

The months of November and December 1989, therefore, mark a significant point of departure when examining the surrounding events. I have examined the activities before and after those dates separately.

The Commission proceeded with an investigation from December 1989 until the Minister of Citizenship appointed a Board of Inquiry in October 1992. This hearing commenced on November 16th 1992 and after 13 hearing days, concluded on September 29th 1993.

The Board is asked to find that the following sections of the *Human Rights Code* have been contravened:

Section 2

> (1).Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance.
>
> (2).Every person who occupies accommodation has the right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap.

Section 8

> Every person has the right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal or threat of reprisal for so doing.

Issues:

The issues to be determined by this Board are:

1. did the living conditions of Ms. Hom's apartment constitute discrimination or harassment, contrary to section 2 of the *Code*?;
2. what part did Mr. Elieff's public comments play in the prohibited discrimination and the unequal treatment; and
3. did Mr. Elieff engage in acts of reprisal after Ms. Hom filed her complaint with the Commission.

Building Conditions

Complainant's Evidence

Chippheng Hom

Ms. Hom occupied Apartment #17 at 105 Cheyenne Ave and later moved to Apartment #18. The facts in this case are unusual. Ms. Hom does not complain that she was turned away as a prospective tenant. Rather, she argues that the services rendered by the landlord during occupancy were discriminatory. By this it is meant that race, ancestry, ethnic origin and place of origin were factors behind the substandard conditions and that this resulted in unequal treatment by the landlord of one racially distinct group of tenants. The connection between substandard service and discrimination because of race and ethnic origin needs careful examination.

Much evidence was led at the hearing about the condition of the apartments. I shall only refer to the most significant elements. Ms. Hom confirmed that her apartment was not

clean, that things were continually breaking down, that there was often so little heat that the stove had to be turned on, and that her apartment was infested with cockroaches. Problems with leaky faucets, poor heating, excessive condensation and deteriorating plaster continued unabated throughout the tenancy and to the day of the hearing . This evidence was supported by other witnesses including Susan Eagle, a community worker, and Tom Partalas, the Public Health Inspector of the City of London Health Unit.

Susan Eagle

Susan Eagle is a minister in the United Church of Canada hired in 1984 by four local churches as a community advocate in the East London area. Ms. Eagle observed that the buildings had been in constant disrepair since 1984. She did admit, however, that some repairs were done once municipal work orders were registered. She visited the complainant on many occasions and corroborated much of her evidence about the state of the apartment as well as the building in 1989 including: falling ceiling plaster; sewage flooding; cockroach infestation; and inoperable laundry facilities.

Ms. Eagle's first contact with Mr. Elieff and the Cheyenne apartments was in 1984 when a tenant association was formed. By 1988 many of the original tenants had left and were replaced by recent immigrants from Vietnam and Cambodia. As a result, a new tenant association of largely Asian tenants was established. With her assistance, the two associations were able to place numerous work orders on the property and, eventually, bring the landlord to court.

It is clear, however, from Ms. Eagle's evidence that the conditions in the Cheyenne Apartments were substandard from the time Mr. Elieff purchased the buildings in 1985 and before the Asian tenants moved in, in 1988.

Tom Partalas

Tom Partalas, the Public Health Inspector for the City of London, gave evidence based on

what was in his file for the Cheyenne Ave apartments. He testified that the landlord established a pattern of response to tenant complaints as early as February, 1987. Mr. Partalas also noted that the condition of the building was not the worst he had seen. The following exchange occurred in the cross-examination of Partalas by the Commission.

Q. How would you rank the condition at the Cheyenne Apartments?

A. I would not say they were the best, it is a continuous battle I would say.

Q. Are they the worst conditions that you have seen?

A. Yes and No.

Q. Perhaps you would like to expand on that answer.

A. In some instances when you are talking about raw sewage you don't see that often. Or if you do people take care of it right away...

Q. But Mr. Elieff didn't take care of it right away, is that right?

A. He told me he didn't have the money or the resources to do the work, but next day he corrected the problem.

When repairs were not done satisfactorily, formal Notices were sent and work orders issued. By August 1988 alone there were 19 outstanding work orders. Eventually, in November 1989, a court in London imposed a fine of $6,000.

The picture that emerges is of a landlord who spent little time and less money on the upkeep of his buildings. An inspection report dated September 12th, 1989 for 105 Cheyenne Ave , produced by the Public Health Inspector, reveals widespread neglect.

> "All occupants advise writer of lack of water and confirmed by writer. In addition general conditions have further deteriorated with broken window on landing between first and second floor and missing window at front entrances, missing window panel at front entrance. The carpeting is dirty and stained in the public area, et cetera. Property Standard deficiencies: a Court date of November 6, 1989 is scheduled. **It would appear no maintenance of building has been done.**" [emphasis added]

Darlene Clark and Jim Daly

The Board heard from two property managers, Darlene Clark and Jim Daly, who were called by the Ontario Human Rights Commission as experts on the management procedures for multi-unit residential buildings. They conducted a study of comparable buildings and concluded that the percentage of expenses to revenue for the Cheyenne apartments was abnormally low. While Clark and Daly were unable to provide reasons for this, I examined the unaudited financial statements of Elieff Investments Ltd., which were admitted as exhibits. They show that the buildings were heavily mortgaged and that financing costs absorbed a large proportion of the revenue. Whatever the real reason might have been, Clark and Daly's study revealed that very little was spent on maintaining the fabric of the buildings and that the repairs would require a considerable infusion of fresh capital.

Clark and Daly provided the Board with an exhaustive list of regular tasks which were needed, in their experience, to maintain such a building in accordance with acceptable standards . The daily, weekly, monthly, and annual checklists bore little resemblance to what was undertaken by Mr. Elieff. Although there is no requirement to meet these standards, the checklists and other opinions offered by Clark and Daly set out what a prudent owner might do in terms of good management of a building.

It would not take much imagination to predict that the low level of spending on repair and the approach to maintenance as a part-time family effort would result in deterioration and tenant complaints. Clark and Daly's evidence amplified a point first raised by Mr. Partalas and others: Mr. Elieff failed to grasp the significance of the current reality of the tenancy market in Ontario. The rental of a thirty-unit apartment building could no longer remain a cottage industry for owner-managers and their families.

For purposes of the *Code* and, in particular, in determining whether a right under section 2(1) or 2(2) has been infringed, it is not enough to show that Mr. Elieff was a bad landlord or that he allowed the building to deteriorate badly. It was the task of the Complainant and

the Commission to establish a prima facie case for discrimination. That is to say, they had to establish that the failure to repair represented unequal treatment based on the race of the Asian tenants. Neither the Complainant nor the Commission argued that the chronic disrepair represented constructive discrimination as set out in section 11 of the *Code*. The Respondent, in turn, presented other reasons for the general disrepair.

Respondents' Evidence

Elijah Elieff

I did not find Mr. Elieff to be a credible witness. He offered blanket denials to every allegation, however mild, about his substandard performance. I can only conclude that he had no appreciation of what the provincial and municipal by-laws expected of him as a landlord. He allowed tenants to double up to insure that the rents were paid and then accused them of overcrowding. He failed to recognize that the condensation on the windows was a result of single glazing and not, as he suggested, cooking or plant watering techniques. He felt that the tenants were equally responsible for maintaining the property. For example, he stated that it was the responsibility of the tenants, not the landlord, to spray for cockroaches and to cover the cost themselves. He believed that, as owner, the buildings were "his" and that governments had no business telling him what to do about such things as health standards.

The growing neglect not only increased his own maintenance costs but fuelled existing animosity between himself and his tenants.In coping with his responsibilities, Mr. Elieff recruited his wife and two grown children to perform maintenance duties. By 1989, he was also running a take-out restaurant at another location. It came as no surprise to learn that he had little time for his tenants.

There was, however, one incident mentioned by Mr. Elieff which revealed that more than just landlord neglect was involved in the general animosity between the landlord and the

tenants. On one occasion, he was caught in the middle by two warring ethnic groups within the building and ended up being very badly beaten. There did not appear to be any connection between Mr. Elieff and his assailants, but it is worth recognizing that the tensions in the building were complex and not simply the result of the landlord's action or inaction.

Previous Superintendents

Irina Sucur

Irina Sucur was a tenant in the building in 1985 when Mr. Elieff bought the apartments. I found her to be a credible witness. At Mr. Elieff's request, she agreed to look after the maintenance of the common areas at both 95 and 105 Cheyenne. Ms. Sucur reported that some of the destruction occurred because the Asian tenants fought among themselves. She complained that Asian parents were unable or unwilling to control the children and were unfamiliar with the proper operation of apartment appliances. She found shoes, for example, in the washing machines. Petty vandalism added to the frustrations of her job. The emergency hall lights were destroyed whenever they were replaced .Cleaning the building became an impossible task for her. In her words, "It just got dirtier and dirtier".
She eventually left in 1987, bitter about the fact that Mr. Elieff appeared sympathetic to the plight of the immigrants, whom she blamed for the deteriorating conditions.

Linda Thomas

Another former superintendant, Linda Thomas gave evidence similar in nature to that of Ms. Sucur, adding that it was not just the Asian tenants, but non- Asian tenants who contributed to the destruction of the property.

John Pipe

The Board heard from John Pipe, a former tenant/superintendant who lived in the Cheyenne apartments for three months in 1992. He testified that by the time he arrived, there was "wholesale destruction of the place" and that he felt it was unfair to expect any landlord to cope with the unrelenting destruction and littering.

He said that the whole building had an inertia of its own and that the destructive influence did not belong to any particular ethnic group. In fact, he reported that an apartment occupied by non-Asian tenants had been"trashed beyond recognition". He appeared to enjoy the presence of Asian tenants and did not single them out for blame.

Racial slurs

Complainant's Evidence

Mr. Elief was alleged to have commented that the Cambodian tenants "lived like little pigs". In her Complaint, Ms. Hom stated that she learned about these comments after they were made public, presumably in the November 1989 newspaper articles. At the hearing, however, Ms. Hom insisted that Mr. Elieff made these comments directly to her. On cross examination, Ms. Hom was unable to explain this discrepancy, other than to suggest that the comment was also made to other Cambodian tenants. I find that Ms. Hom was unsure whether the comments were made before the newspaper reports in November, 1989.

Ms. Hom also testified that Mr. Elieff said to her, " you people eat stink fish". She was sure that the comments were made directly to her and to other tenants. When she asked Elieff to clean the apartment and to spray it for cockroaches, she recalled him saying that because she was from Cambodia, she liked cockroaches and that if she didn't like it she could move out. No corroborating evidence was offered for any of these comments. Nor did the Board hear from any other Asian tenant who may have been the target of racial slurs.

One final comment was reported by Ms. Hom. When she wanted to change to a two-bedroom apartment, Mr. Elieff is reported to have asked her whether she was "a bad girl or a good girl". Ms. Hom testified that this greatly upset her because of the sexual overtones. I make no finding as to its truth or untruth because it relates more to "sex" or "sexual harassment", none of which were included as a ground in the complaint of discrimination in this case. The Commission declined to include "sex" or as a ground at the commencement of the hearing when "race" was added to "ethnic origin" and "harassment".

Greg Van Moorsel

Greg Van Moorsel, a reporter with the *London Free Press* gave evidence before the board on two occasions. Once by a two-way telephone speaker, and once in person. He testified that as a result of the much-publicized fine levied against Mr. Elieff in November 1989, the *London Free Press* sent him to interview Mr. Elieff. The conditions in the Cheyenne Avenue apartments had been covered by the paper for several months prior to this.

Mr. Van Moorsel's first article appeared on November 8th, 1989. He recalled Mr. Elieff saying he would not pay the fine because he considered it unfair and that he could not afford to maintain the required standards in the apartments. He blamed the tenants for wrecking his property saying, among other things, "They're like little pigs...they think they're still living in the jungle". This was reported verbatim in the article on November 8th.

The next day, the following headline appeared in the *London Free Press*; "Moral outrage at landlord's remarks." Community leaders and tenants, picketed Mr. Elieff's restaurant in the City. The newspaper reported that the Cambodian community was deeply offended by the remarks. It was at this time that consideration was given to filing a complaint with the Ontario Human Rights Commission.

Mr. Elieff then invited Mr. Van Moorsel to visit his property and take pictures of the extent of the tenant destruction. Mr. Van Moorsel testified that Mr. Elieff believed he was taking all the risk in allowing refugees to live in his apartments, and that the tenants had little

appreciation of reciprocal responsibilities. In reference to the comments reported the day before in the newspaper, Mr. Elieff now said, "I'm not saying they're pigs, but they're only doing what pigs do". The Asian community in the City was deeply offended by these additional remarks and the phrase about living like little pigs was repeated over and over again by the newspaper in subsequent weeks. In Mr. Van Moorsel's own words, the articles took on a life for themselves.."one story generates another and another and another." Mr. Van Moorsel testified that in November 1989, protests were lodged on behalf of the Asian community with London's Race Relations Committee whose stated purpose, as reported in the newspaper article, was to help Asian renters if they had a Human Rights complaint.

I accept the evidence of Mr. Van Moorsel concerning his interaction with Mr.Elieff. I found him to be an extremely credible witness. He was able to recall the exact words used by Mr. Elieff three months before his notes were finally introduced as evidence. I find that the comments made by Mr. Elieff about the Asian tenants living like pigs were actually made as reported

Other tenants

Neither the Commission nor the Complainant produced a witness who suggested that non-Asian tenants were given more favourable treatment than Asian tenants. Susan Eagle said she visited the buildings in the years before any Vietnamese or Cambodian tenants moved in and there were serious problems even then with repairs. In addition, evidence filed at the hearing , but not referred to directly by any party, showed that at least three tenants, whose names were not Cambodian or Vietnamese, had also complained to the landlord about poor services.

One tenant was a single parent whose story appeared in the *London Free Press* on September 12th, 1989. The article was introduced as an exhibit at the hearing although the tenant featured in the article, did not give evidence before the Board. I accept the article only

in so far as it clarifies Ms. Eagle's point about the long-standing problem with repairs. The article suggests that someone who was not of Vietnamese or Cambodian origin also complained about poor services by the landlord. The paper reported that the tenant's apartment was dirty, with poorly -patched walls and a kitchen sink which was falling through the counter. Cockroaches were already a problem and the supply of hot water was non-existent.

Two other tenants whose names were not of Asian origin , wrote to Mr. Elieff in May 1986, complaining of ceiling leaks, plaster falling off around the balcony doors and windows, sewage backups in the sinks and tubs and malfunctioning stoves. Again I refer to this as further clarification of Ms. Eagle's evidence of the widespread disrepair that existed before the Asian tenants moved in and which was not directed at them as a special group..

Mr. Van Moorsel told the Board that at a public meeting about the Cheyenne apartments, one of the former tenants, who was not from the Asian community, said that each time she complained about garbage on the premises, Mr. Elieff told her to clean it up herself. She was then told that all the tenants were a bunch of pigs.

In the absence of witnesses from the Asian community, two points emerge from the articles about non-Asian tenants and from the hearsay evidence of Mr. Van Moorsel. First, the landlord's refusal to meet his legal obligations was not focussed against any one ethnic or racial group at the expense of another. Secondly, the landlord's actions did not have an adverse effect on any one group of tenants which could be characterized as discrimination contrary to the *Code*.

THE LAW

It has been widely recognized that, in most cases of discrimination there are few, if any, corroborating witnesses. It is up to the Board of Inquiry to draw inferences from appropriate circumstantial evidence. Judith Keene in her recent book, *Human Rights in Ontario* refers to a 1973 unreported case, *Kennedy v. Mohawk College* in which the Board canvassed the issue at length:

> In a case where direct evidence of discrimination is absent, it becomes necessary for the Board to infer discrimination from the conduct of the individuals whose conduct is in issue. This is not always an easy task to carry out. The conduct alleged to be discriminatory must be carefully analysed and scrutinized in the context of the situation in which it arises... , such conduct to be found discriminatory must be consistent with the allegation of discrimination and inconsistent with any other rational explanation...the Board must view the conduct complained of in an objective manner and not from the subjective viewpoint of the person alleging discrimination...(emphasis added).

In addition, the alleged discriminatory act should not be coloured by subsequent statements or actions. In other words, one cannot use later activity to provide discriminatory meaning to an earlier event.

Human rights legislation endeavours to address discrimination which may be caused by unequal treatment or, in the case of constructive discrimination, by equal treatment which does not accommodate special needs arising from a prohibited ground of discrimination like sex or handicap. This case, however, was not argued on the basis of constructive discrimination pursuant to section 11 of the *Code*. The task then, was to see if there was

evidence of unequal treatment and if so, whether it revealed a discriminatory animus.

I found that it was not possible to conclude that there was such treatment in this case. Tenants of all racial groups were subjected to the same deplorable living conditions. One could well ask whether, in the absence of an environment poisoned by racial slurs or other discriminatory behaviour, a tenant group of Bhuddists could complain that poor heating and falling plaster amounted to discrimination by a Christian landlord if all tenants, regardless of religion, were subjected to the same treatment? I think not. For there to be a breach of the *Code*, the treatment must be discriminatory and not just bad.

The Commission argued that earlier cases dealing with racial slurs were relevant. In *Dhillon v. F.W. Woolworth C. Ltd.* (1982), 3 C.H.H.R. D/743 (Ont. Bd. Inq.), racial slurs were seen as a breach of a term or condition of employment. The case law, however, also establishes that an isolated comment, does not amount to a breach of the *Code* unless its intensity and nature creates a poisoned environment. The quantum of verbal abuse is important in poisoned environment cases if, as in *Dhillon*, the racial slurs are to treated as a term of employment or of a lease. Additionally, poisoned environment cases invariably have one group of people treated differently from another. H. Krever wrote in *Simms v. Ford of Canada*, (quoted in *Dhillon* at paragraph 6702), "In my opinion, the word 'discriminate' in the context of the Code means to treat differently, or in the particular context...to make an employee's working conditions different (usually in the sense of less favourable) from those under which all other employees are employed" [emphasis added]. If racial slurs against blacks were tolerated in a workplace where the majority were white, wrote Krever, it would mean that black employees had to work under unfavourable conditions which did not apply to white employees. Differential treatment is what lies at the heart of discrimination in a poisoned environment.

In the case of *Ahluwalia v. MetropolitanToronto Board of Commissioners of Police* (1983), 4 C.H.R.R. D/1757 (Ont. Bd. of Inq.) the employer was found to have discriminated because reasonable steps were not taken to deal with an environment poisoned by racial slurs.

What appears important to the poisoned environment argument, is a finding that the racial slurs and harassment are of such a nature or extent that they constitute in and of themselves treatment that is unequal when compared with the treatment of other employees. The Board in *Ahluwalia* wrote:

> To succeed... the Complainant must establish that there was an atmosphere of racial harassment and derogation to which the Complainant was subjected in the workplace by fellow employees, of such a degree that it constituted a condition of employment to which other employees were not subjected and which no other employee should reasonably have been required to endure". (emphasis added)

In another the case referred to by the Commission , *Jeffers v. Greenbrook Manor Ltd. and Kostiauk* (1981), 3 C.H.H.R. D/1038 (Ont. Bd. of Inq.) the Board looked for actual evidence of different treatment of black as opposed to white tenants.

> "The great difficulty is in assessing whether these incidents were merely the manifestations between a strict and insensitive landlord and a suspicious and aggressive tenant or whether they amounted to discrimination as to terms or conditions of occupancy based on race and colour."

It is interesting to note that the black Complainant in *Jeffers* alleged that the unresponsiveness of the landlord in carrying out repairs to her apartment was the result of discrimination. This allegation failed because there were examples of white tenants who had equal difficulties in persuading the landlord to do repairs. Referring to the poor relationship between landlord and tenant, the Board wrote:

> None of the incidents, in themselves, establish discriminatory acts on the part of Mr. Kostiauk (the landlord). Taken together, they might suggest an unusual attitude towards the Jeffers (tenants), suggestive of discrimination. However, there is another, very strong explanation for the attitude of the

> Kostiauks towards the Jeffers and that was the hostility which arose out of the landlord and tenant relationship.

The Board eventually found for the Complainant, not because of the failure to perform repairs, but because there was direct evidence of the landlord's unequal treatment.

There are similarities between this case and the *Jeffers* case. Many incidents of disrepair and poor maintenance of municipal standards raise the spectre of discrimination on the part of Mr. Elieff because a large proportion of the tenants like Ms. Hom were Cambodian. However, at the time of the Complaint, the poor conditions in the apartment affected all tenants regardless of ethnic origin.

HARASSMENT (Section 2(2)) and REPRISAL (Section 8)

I have concluded that the public comment in November 1989, and the filing of the complaint in December 1989, marked the end of one regime and the beginning of another. I find that the activity of the Respondent Elieff prior to November and December 1989 did not constitute a breach of Section 2(1) of the *Code*. However, once the Respondent Elieff was aware that a complaint was filed with the Human Rights Commission, he adopted a different stance in his relationship with the tenants and, in particular, with Ms. Hom.

The details of personal harassment emerged repeatedly in testimony given by both Ms. Hom and Ms. Eagle. It was not, however, based on race or ethnic origin and can more usefully be characterized as reprisal. Many of the Complainant's allegations were admitted by the Respondent. Without informing Ms. Hom, Mr. Elieff raised the rent beyond the legal limit. He admitted, when giving evidence, that he instructed his agent to return the monthly rent cheque as it was "inadequate". He cut off electricity to Ms. Hom's apartment and failed to respond to written requests for repairs. During an adjournment of proceedings before this Board, he served Ms. Hom, and no other defaulting tenant, with a Notice of Termination.

Furthermore, it is also evident that Ms Hom faced deliberate and personal mistreatment because her name appeared as initiator of the complainant to the Human Rights Commission, a fact that was widely publicized in the press. After December 1989, what might have been harassment on its own, was in reality reprisal.

It is hard to draw any other conclusion from this litany of activity than that there was reprisal against Ms. Hom for pursuing her complaint with the Human Rights Commission. I therefore find that Mr. Elieff has contravened section 8 of the *Code*.

CONCLUSIONS

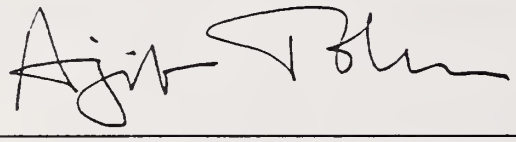
Based on the evidence produced at the hearing, I find that the Commission and the complainant were not able to prove that the Respondents, breached section 2(1) or 2(2) of the *Code* by failing to provide equal treatment without discrimination based of race in accommodation at the Cheyenne apartments.

The Board of Inquiry does not, of course, have jurisdiction to determine what remedies, if any, may be available to the tenants under the provincial landlord/tenant legislation or municipal by-laws. Under the circumstances, and in light of the evidence discussed above, I find that it is not possible to use the *Code* to remedy the living conditions in the Cheyenne Ave. apartments.

I find, however, that the respondent Elijah Elieff and his personal corporation, the Respondent Elieff Investments Ltd. were responsible for actions which amounted to reprisal contrary to section 8 of the *Code*. The Complainant, Ms. Hom, has suffered injury to her dignity and considerable mental anguish ever since she filed her complaint with the Commission.

ORDER

The Respondents, Elijah Elieff and Elieff Investments Ltd., are jointly and severally liable and shall pay to the Complainant, Chippheng Hom the sum of $2,500.00 as general and punitive damages. Interest on that amount shall accrue from the date of this Order to the date of payment at the rate fixed today by the *Courts of Justice Act.*



AJIT S. JOHN August 24, 1994

CHAIR, BOARD OF INQUIRY